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Constitutional Law -- Taxation -- Chain Store Tax

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occupation is purely a matter of private interest, subject to only a limited degree of legislative restriction.⁷ It is submitted that the present case was rightly decided since the individual has something in the nature of a vested right to drive his private car.

One court, in considering whether or not a certain ordinance imposed an arbitrary power in an officer, considered, among other factors, the hardship a refusal of the permit would impose on the applicant.⁸

The tendency of the courts to become more liberal in the construction of this type of statute can, to some extent, be attributed to the growing complexity of our administrative government, necessitating a grant of greater discretionary powers to local authorities.⁹

WEX S. MALONE.

Constitutional Law—Taxation—Chain Store Tax

The recent case of *The Great Atlantic and Pacific Tea Company et al. v. Maxwell*¹ held valid under both state and federal Constitutions a statute² declaring every person, firm or corporation operating or maintaining two or more stores or mercantile establishments under the same general management, supervision, or ownership to be a chain store operator *per se*, and as such subject to a license tax, for the privilege of engaging in such business, of fifty dollars (\$50.00) on each and every store operated in the state in excess of one. The

a vested right); *Brunswick-Balke Co. v. Mecklenburg Co.*, 181 N. C. 386, 107 S. E. 317 (1921) (Operation of billiard parlor held privilege).

⁷In the following cases ordinances laying down apparently arbitrary powers of discrimination were held valid: *Sumner v. Ward*, 126 Wash. 75, 217 Pac. 502 (1923) (peddlers); *Minces v. Schoenig*, 72 Minn. 528, 75 N. W. 711 (1898) (gift, fire, and bankrupt sales); *State v. Cohen*, 73 N. H. 543, 63 Atl. 928 (1906) (dealers in junk); *Gundling v. Chicago*, 177 U. S. 183 (1900) (sale of cigarettes); *Clark v. McBride*, 101 N. J. L. 213, 127 Atl. 550 (1925) (employment agencies).

⁸*Matthews v. Murphy*, 23 Ky. L. Rep. 750, 63 S. W. 785, 786 (1901).

⁹*Leach v. Daugherty*, 73 Cal. App. 83, 238 Pac. 160 (1925); *Ex parte Kreutzer*, *supra* note 4.

¹*The Great Atlantic and Pacific Tea Company et al v. Maxwell*, Commissioner of Revenue of North Carolina, 199 N. C. 433 (1930).

²"*Branch or Chain Stores*. Every person, firm or corporation engaged in the business of operating or maintaining in this State, under the same general management, supervision, or ownership, two or more stores or mercantile establishments, where goods, wares, and/or merchandise is sold or offered for sale at retail shall be deemed a branch or chain store operator, shall apply for and obtain from the Commissioner of Revenue a State license for the privilege of engaging in such business of a branch or chain store operator, and shall pay for such license fifty dollars (\$50.00) on each and every store operated in this State in excess of one." N. C. PUB. LAWS (1929), c. 345, §162.

statute obviously was passed to remedy the defects of the 1927 chain store tax³ which was declared void in *The Great Atlantic and Pacific Tea Company v. Doughton*.⁴ The present statute differs from the former one in that it is not retroactive,⁵ and the classification is between operators of one store and operators of more than one store.

The right of the state to tax trades for the purpose of raising revenue and to classify for the purpose of taxation is no longer questioned. The only requirements under the Fourteenth Amendment are that such classifications be reasonable and not arbitrary, for the Amendment was not intended to compel the State to adopt an iron rule of equal taxation.⁶

Due to the campaign being waged in the press and over the radio against chain stores, it is inevitable that various types of legislation directed at chain stores will be passed.⁷ To date, with the exception of North Carolina, only two such statutes have been before the courts. The Supreme Court of Kentucky declared an Act requiring a "cash and carry" grocery store to pay a higher tax than a regular service grocery store to be unconstitutional on the basis that there was no reasonable grounds for the distinction.⁸ The Federal District Court recently held an Indiana Act taxing mercantile store operators by a

³"*Branch or Chain Stores*. That any person, firm, corporation, or association operating or maintaining within this State, under the same general management, supervision or ownership, six or more stores or mercantile establishments, shall pay a license tax of \$50.00 for each such store, or mercantile establishment in the State, for the privilege of operating or maintaining such store or mercantile establishments." N. C. PUB. LAWS (1927), c. 80, §162.

⁴The Great Atlantic and Pacific Tea Company *et al.* v. Doughton, Commissioner of Revenue of North Carolina, 196 N. C. 145, 144 S. E. 701 (1928). An excellent article dealing with this case and the chain store tax in general is —Becker and Hess, *The Chain Store License Tax and the Fourteenth Amendment* (1929), 7 N. C. L. REV. 115. Also commented on in (1929) 3 TEMPLE L. Q. 322, and (1929) 7 TENN. L. REV. 316.

⁵Clarkson, J., concurring in *Tea Co. v. Doughton*, *supra* note 4: "The vice of the license tax to my mind is in the fact that when the sixth store is taxed it is retroactive, and not only is the sixth store taxed but the first five also."

⁶This question is fully discussed by Becker and Hess, *op. cit. supra* note 4. Cases dealing with discrimination in license tax based on different methods used in same kind of business annotated in NOTE (1926) 43 A. L. R. 592.

⁷In a recent address before the Kansas Retail Grocers Association, Governor Theodore Christianson of Minnesota said that where ten years ago only four per cent of the country's retail business was done by chain stores, today more than twenty per cent of the total retail business was done by them. He also said that there are now in America over 100,000 chain stores having annual sales of more than \$8,000,000,000. U. S. DAILY, Oct. 24, 1930 at 2587. Such a radical change in the economic life of the nation will necessarily call for some kind of regulatory legislation.

⁸*City of Danville v. Quaker Maid, Inc.*, 211 Ky. 677, 278 S. W. 98, 43 A. L. R. 590 (1925).

graduated scale based on the number of stores owned to be unconstitutional.⁹ The judge in so holding said, "All persons engaged in the operation of one or more stores or mercantile establishments within the state of Indiana belong to the same class for occupational tax purposes, as the plaintiff."

The North Carolina decision is opposed to the above holdings, but it is submitted that the result is correct. The court recognizes as a proper basis for classification the protection of the independent merchant class.

MOORE BRYSON.

Criminal Law—Automobiles—Manslaughter—Failure to Stop at Highway Intersection.

Defendant, in violation of a statute,¹ failed to stop before turning into a highway from a side road. Just as his car straightened out in the highway it was struck from the rear by a bus. The bus skidded, turned over, and a passenger was killed. Defendant was charged with manslaughter. The pavement was slippery with snow and ice, and the defendant's car was first seen by the bus driver when it was five or ten feet away. A person coming into the highway from the side road could see to the left—the direction from which the bus came—for a distance of 175 yards. *Held*, the purpose of the statute is to allow motorists to gain a knowledge of conditions on the highway. Since the defendant already had such knowledge, the purpose of the statute had been accomplished, and there was no proximate

⁹ *Jackson v. State Board of Tax Commissioners of Indiana et al.*, 38 F. (2d) 652 (S. D. Ind. 1930). ACTS IND. 1929, c. 207, §5, (The validity of the classification in such section being the main question of the case.) is as follows: "Every person, firm, corporation, association, or copartnership opening, establishing, operating or maintaining one or more stores or mercantile establishments, within this state, under the same general management, supervision, or ownership, shall pay the license fees hereinafter prescribed for the privilege of opening, etc. . . ."

The license fees hereinafter prescribed shall be as follows:

(1) Upon one store the annual license fee shall be three dollars for each such store;

(2) Upon two stores or more, but not to exceed five stores, the annual license fee shall be ten dollars for each such additional store;

(3) Upon each store in excess of five, but not to exceed ten, the annual license fee shall be fifteen dollars for each such additional store;

(4) Upon each store in excess of ten, but not to exceed twenty, the annual license fee shall be twenty dollars for each such additional store;

(5) Upon each store in excess of twenty, the annual license fee shall be twenty-five dollars for each such additional store."

¹ N. C. ANN. CODE (Michie, 1927), §2621 (63).